

ORDINANCE NO. 964

AN ORDINANCE GRANTING TO UNS GAS, INC., AN ARIZONA PUBLIC SERVICE CORPORATION, ITS LEGAL REPRESENTATIVES, SUCCESSORS, LESSEES AND ASSIGNS, CERTAIN POWERS, LICENSES, RIGHTS-OF-WAY, PRIVILEGES AND FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN IN CITY OF WILLIAMS, STATE OF ARIZONA, AS NOW OR HEREAFTER CONSTITUTED, WORKS, SYSTEMS AND PLANTS FOR THE HANDLING, PRODUCTION, MANUFACTURING, TRANSPORTING, STORING, SALE AND DISTRIBUTION OF GAS INTO, OUT OF, AND THROUGH SAID MUNICIPALITY, AND FOR THE DISTRIBUTION AND SALE OF SUCH GAS TO SAID MUNICIPALITY, ITS INHABITANTS AND OTHERS, INCLUDING CUSTOMERS INSIDE, BEYOND, AND OUTSIDE OF THE LIMITS OF SAID MUNICIPALITY; AND TO USE THE STREETS, AVENUES, EASEMENTS, RIGHTS-OF-WAY, ALLEYS, HIGHWAYS, SIDEWALKS, BRIDGES AND OTHER STRUCTURES AND PLACES AND PUBLIC GROUNDS IN SAID MUNICIPALITY FOR A PERIOD OF TWENTY-FIVE (25) YEARS; AND PRESCRIBING IN CONNECTION THEREWITH CERTAIN RIGHTS, DUTIES, TERMS AND CONDITIONS HEREIN MENTIONED; AND PROVIDING FOR THE PAYMENT TO SAID MUNICIPALITY OF A PERCENTAGE OF CERTAIN REVENUES OF GRANTEE FROM ITS OPERATIONS THEREIN; AND DECLARING AN EMERGENCY.

BE IT ORDAINED by the Mayor and City Council of Williams, Arizona as follows:

Section 1. That the City of Williams, a municipal corporation in Coconino County, Arizona, hereinafter called the "City", hereby grants to and vests in UNS Gas, Inc., an Arizona public service corporation, hereinafter called the "Company", a franchise (the "Franchise") with the right to operate a gas plant, system, pipelines and works in the City, as now or hereafter constituted, and the authority, license, power and privilege to maintain, construct, build, equip, conduct or otherwise establish and operate in said City, works or systems and plants to manufacture, use, sell, store, distribute, convey or otherwise establish, conduct, serve, supply or furnish the inhabitants of said City and others, and to the City whenever it may desire to contract therefore, gas for light, fuel, power, heat and any and all other useful purposes, and the Company hereby is granted passage, right-of-way and the right to occupy and use in any lawful way during the life of this Franchise every and any and all City streets, alleys and other dedicated public rights-of-way, now existing or may be hereinafter extended, and any other property or premises owned by the City with the prior approval of the City, for every and any such service, use, effect and lawful purpose as herein mentioned. The rights afforded to the Company herein shall include the right to make reasonable upgrades or changes to the Company's facilities to respond to changes in technology in order to enhance service to the Company's customers.

In conducting its activities authorized by this franchise, the Company will comply with all applicable federal, state, county and municipal laws, ordinances and regulations. All plants, systems, pipelines, works, structures and equipment, and other appurtenances erected by the

Company, shall be so located as to cause minimal interference with (i) the proper use by the general public and by any entity using the same with authority from the City of streets, avenues, easements, rights-of-way, alleys, highways, sidewalks, bridges and other structures or places or public grounds; and (ii) the rights and reasonable convenience of property owners who adjoin any of said streets, avenues, easements, rights-of-way, alleys, highways, sidewalks, bridges or other structures or places or public grounds.

Section 2. The Company is hereby authorized, licensed and empowered to do any and all things necessary and proper to be done and performed in executing the powers and utilizing the privileges herein mentioned and granted by this Franchise, provided the same do not unreasonably conflict with water or other pipes, sewer (including storm sewers and publicly-owned drainage facilities of all kinds), or any other pre-existing underground installations, and that all work done in said public property or other public premises of the City by the Company shall be done with the utmost diligence and the least practicable inconvenience to the public or individuals, and that the Company shall, subject to the reasonable approval of the City and within a reasonable time, restore such public property or other public premises excavated by it to their original condition as nearly as practicable. The Company shall remove or relocate its facilities as and when required by the City to accommodate right-of-way improvements for the public benefit; said removal or relocation shall be made at the sole cost and expense of the Company, unless the Company can demonstrate that its facilities were lawfully installed prior to the dedication to or acquisition by the City of the property in question. Completed or "as-built" plans of any facilities installed or relocated by the Company shall be submitted by the Company to the City as may be required by the City's Public Works Director. All work performed by the Company and/or its agents shall be in accordance with applicable City codes, federal and state laws, policies and procedures of the City and other applicable regulations.

The Company shall save the City, its officers, agents and employees, harmless from, and shall defend and indemnify them against, any and all liabilities proximately caused, wholly or in part, by the Company's negligence or intentional acts or omissions in the erection, construction, installation or operation hereunder of the Company's facilities, excluding the portion of such liabilities proximately caused by the City's own negligence.

Section 3. The Company's plant, systems, pipelines, works and other structures, equipment, improvements and appurtenances shall be installed in accordance with good engineering practices and shall be located, erected, constructed, reconstructed, removed, repaired, maintained and operated so as not to endanger or unreasonably interfere with the lives of persons or to unreasonably interfere with the improvements the City may deem proper to make or to unnecessarily hinder or obstruct pedestrian or vehicular traffic to public ways, places, and structures.

Prior to commencing any work in a right-of-way (except in emergency circumstances), the Company shall submit plans of work to be performed to the City's Public Works Director for review and approval, and obtain any permit necessary for such work. The Company, upon receipt from the City of any finalized plans that would require construction or relocation of Company

facilities, shall advise the City on the estimated amount of work required and the anticipated necessary timeframe of such work within ninety (90) days of receipt of such plans. For purposes of budgeting and asset allocation by the Company, the Company shall have six (6) months from the receipt of such finalized plans in which to design and to complete construction or relocation of the necessary facilities.

Representatives of the City and the Company shall, during the entire term of this Franchise, meet at least once in each calendar year to review any projects involving the construction or modification of City rights-of-way within the subsequent five-year period in order for both parties to adequately plan and budget for such actions and to determine the extent of work required of the Company, if any, for such projects.

Section 4. The Company shall defend the City against all claims for injury to any person or property caused by the negligence of the Company in the construction or operation of its property, and in the event of a determination of liability shall indemnify the City. More particularly, the Company does hereby agree to indemnify and hold harmless the City from any and all liability, claim, demand or judgment arising out of any injury to any person or property because of negligence in whole or in part arising out of the construction, repair, extension, maintenance or operation of its equipment in connection with this Franchise.

Section 5. The Company agrees that at all times during the existence of this Franchise, that it will maintain in force, at its own expense, a general liability insurance program to adequately insure and/or protect the legal liability of the Company with respect to the installation, operation, and maintenance of its facilities, together with all the necessary and desirable appurtenances authorized by this Franchise, to occupy the public property or other premises of the City. Such insurance program will provide protection for bodily injury and property damage arising from the operation by the Company of its facilities. The Company shall file with the City documentation of such liability insurance program within sixty (60) days following the request of the City. The policy limits or any insurance maintained in compliance with this section shall not limit the Company's indemnification requirements under Section 4 of this Franchise.

The Company shall notify the City of any application it makes to the Arizona Corporation Commission for authority for a general rate increase as required by the then-existing rules, administrative code provisions, statutes or Arizona Corporation Commission orders applicable to such application.

Section 6. The rates and charges to be charged by the Company for furnishing gas service hereunder and the rules and regulations to be made and enforced by the Company for the conduct of its business shall be those from time to time on file and in effect with the Arizona Corporation Commission applicable to such service.

Section 7. The Company shall have the right and privilege of assigning this Franchise and all rights and privileges granted herein, as long as prior notice of such assignment is presented

to the City, and whenever the word "Company" appears herein, it shall be construed as applying to its successors, lessees and assigns.

Section 8. The Company shall pay to the City in consideration of the grant of this Franchise a sum equal to two percent (2%) of all revenues of the Company, including regulatory assessments but excluding transaction privilege taxes and similar governmental impositions, from the retail sales and/or delivery by it and other charges for services attendant to the retail sale and/or delivery of natural gas delivered through the Company's distribution system within the present and any future corporate limits of the City, as shown by the Company's billing records. Said payments shall be in lieu of any and all fees, charges or exaction of any kind otherwise assessed by the City in any way associated with the Company's use of the rights-of-way, including, but not limited to, the construction of the Company's facilities hereunder or for permits or inspections thereof during the term of this Franchise. Beginning on the Effective Date of this Franchise as set forth herein, payment as described herein shall be payable in quarterly amounts within thirty (30) days after the end of each calendar quarter.

Notwithstanding any provision contained herein to the contrary, the Company shall pay, in addition to the payment provided herein, the following charges, taxes and fees as may be established in a code or ordinance properly adopted by the City: (a) general ad valorem property taxes; (b) transaction privilege and use tax as authorized by law and collected by the Company for its retail sales to its customers within the present and any future corporate limits of the City; and (c) other charges, taxes or fees generally levied upon businesses by the City, provided said charge, tax or fee is a flat fee per year and that the annual amount of such fee does not exceed the amount of similar fees paid by any other businesses operated within the City.

If any lawful authority having jurisdiction in the City hereafter prohibits said payment, the obligation to make such payments hereinabove provided for shall forthwith cease. For the purpose of verifying amounts payable hereunder, the books and records of the Company shall be subject to inspection by duly authorized officers or representatives of the City at reasonable times.

Section 9. This Franchise shall be accepted by the Company in writing, which acceptance shall be filed with the City within thirty (30) days after the passage of this Ordinance, and once so accepted, this Ordinance shall be a contract duly executed by and between the City and the Company, subject to approval by the City's electorate in conformance with A.R.S. § 9-502.

Section 10. If any section, paragraph, subdivision, clause, phrase or provision hereof shall be adjudged invalid or unconstitutional, the same shall not affect the validity hereof as a whole, or any part or provision other than the part so decided to be invalid or unconstitutional.

Section 11. This Franchise shall continue in full force and effect for a period of twenty-five (25) years from the first day of the calendar month following the election approving this Franchise (the "Effective Date"); however, the City may terminate this Franchise in the event the City shall have formally found, after notice and hearing, the Company has failed to comply with


any material provisions of this Franchise or has failed to correct any failure after thirty (30) days written notice.

Section 12. All plant, system, pipelines, works, and all other physical property installed or operated by the Company in accordance with the terms of this Franchise shall be and remain the property of the Company, and upon expiration of this Franchise or any extension or renewal thereof, the Company is hereby granted the right to enter upon the public property or other public premises of said City for the purpose of removing any and all such plant, system, pipeline, works and other property of the Company, at any time within six (6) months after termination of this Franchise or any such extension or renewal thereof.

All work undertaken by the Company in the removal of said property shall be done in a workmanlike manner and with the utmost diligence and least practicable inconvenience to the City and the public. The Company shall, at its own expense and in a manner and time approved by the City, restore all streets, avenues, easements, rights-of-way, alleys, highways, sidewalks, bridges and public grounds which may be excavated or otherwise affected by the Company in the removal of said property as nearly as possible to the condition of said property existing at the time of commencement of said restoration.

Section 13. The Company shall reimburse all of the City's expenses incurred in conducting the franchise election, but if more than one item is on the same ballot, the Company shall pay only that prorated portion of the City's election expenses determined by dividing all of the City's expenses by the total number of measures or offices presented on the ballot that the City is financially responsible for.

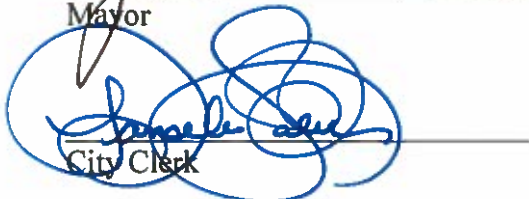
WHEREAS, this Ordinance has been PASSED AND ADOPTED by the City Council of Williams Arizona, this 14th day of June, 2018.



Mayor

6.14.18

Date



City Clerk

June 14, 2018

Date

Approved as to form:



City Attorney
Mangum, Wall, Stoops & Warden PLLC

June 29, 2018

Date

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

ACCEPTED WITHOUT CHANGE:

UNS Gas, Inc.
By: Vice President

Date